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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/572,811	03/22/2006	Luppo Edens	4662-157	4888

23117 7590 01/20/2011
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EXAMINER	
SINGH, SATYENDRA K	
ART UNIT	PAPER NUMBER
1657	
MAIL DATE	DELIVERY MODE
01/20/2011	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	Application No.	Applicant(s)	
	10/572,811	EDENS ET AL.	
	Examiner	Art Unit	
	SATYENDRA K. SINGH	1657	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 03 January 2011 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

a) ☐ The period for reply expires _____months from the mailing date of the final rejection.

b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
   (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
   (b) ☐ They raise the issue of new matter (see NOTE below);
   (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
   The status of the claim(s) is (or will be) as follows:
   Claim(s) allowed: *NONE*.
   Claim(s) objected to: *25 and 26*.
   Claim(s) rejected: *9,11,12 and 23-31*.
   Claim(s) withdrawn from consideration: *NONE*.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.

12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____

13. ☐ Other: _____.

/JON P WEBER/
Supervisory Patent Examiner, Art Unit 1657

Continuation of 11. does NOT place the application in condition for allowance because:

Applicant's submission of 01/03/2011 is duly acknowledged and entered. However, the instant claims as amended are not in the condition for allownace because of the following reasons of record:

First, it is noted that instant claims 25 and 26 are OBJECTED TO as they depend from a canceled claim 10. Appropriate correction is required.

Second, claims 9, 11, 12 and 23-31 (as currently amended) are/remain rejected under 35 USC 103(a) as being obvious over the prior art references of Messer et al in view of Hausch et al and Dekker et al, as discussed in details in the office action of record. Applicant's argument (see remarks, pages 19-20, in particular) that the currently added limitations of "...and is pepsin resistant" (see claims 9 and 11, for the prolyl endopeptidase used in the instant invention), distinguish the instant invention from the prior art of record in view of the disclosure of the post filing art of STEPNIAK ET AL 2006, especially figure 1 on page G623, is fully considered. However, it is not found to be persuasive because the secondary reference of Dekker et al as already relied upon in the obviousness rejection of record uses the same enzyme (i.e. the prolyl endopeptidase having an acidic pH optimum, below 5.5, also isolated from Aspergillus niger, the same source), and the feature currently recited as being "pepsin resistant" would be intrinsic property of the enzyme used by Dekker et al, as was earlier eluded by the examiners during the applicant initiated interview (see paper dated 12/10/2010). Since, the skilled artisan in the art would want to degrade the celiac peptide at the earliest possible point (i.e. either ex-vivo before ingestion, or in vivo in the stomcah), before allergenic peptides reach intestinal tissue, the site of inflammation; and since, Dekker et al had already established the acidic pH resistance and activity optima of the same PEP enzyme (i.e. its suitability for digestion in the stomach pH environment), an artisan of ordinary skill in the art would have had every expectation of successfully substituting a superior functional PEP enzyme of Dekker et al in the invention of Hausch et al, as discussed in details in the office action of record. Therefore, advantages of such enzyme substitution would have been fully contemplated by an artisan of ordinary skill, at the time this invention was made, given the detailed combined disclosure of the cited prior art of record. The obviousness rejection of record is, therefore, properly made and maintained.

/Satyendra K. Singh/
Examiner, AU 1657